



National Association of Federal Credit Unions

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June 14, 2005

Donald C. Clark
Secretary
Office of the Secretary, Room H-159 (Annex A)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Proposed Rule for FDICIA Disclosures, Matter No. R411014

Dear Mr. Clark:

I am writing on behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions, in response to the Federal Trade Commission's request for comments regarding proposed disclosure regulations for non-federally insured depository institutions under the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). The proposed disclosures would require non-federally insured depository institutions to disclose their lack of federal insurance to their depositors and would prohibit these same institutions from accepting deposits from consumers who have not acknowledged in writing that the institution lacks federal insurance.

NAFCU believes that the issue of federally provided insurance for depository institutions is of critical importance to financial consumers. In today's world, many consumers mistakenly assume that each dollar added to their accounts is backed by the federal government up to the prescribed limits. However, this is not always the case, and customers of non-federally insured or uninsured institutions may not be aware of this fact.

In fact, with regard to non-federally insured credit unions, the General Accounting Office (GAO) has found that significant numbers have failed to make the statutorily required disclosures.¹ The GAO's review discovered that 37 percent of locations (main offices and branches) visited failed to post disclosures in lobbies; 59

¹ U.S. General Accounting Office, GAO-04-91, Credit Unions 79 (2003).

percent of the brochures, membership agreements, signature cards, deposit slips, and newsletters obtained from these sites failed to include the required disclosures; and, 50 percent of Web sites of privately insured credit unions were non-compliant. The GAO's report noted that this lack of compliance raised concerns that congressional intent was not being satisfied,² which was to ensure that consumers were made aware that in the event of a failure they might not get their money back.

Without advance notice of an institution's insured status, a consumer cannot make an informed decision about the risks involved in entrusting his or her funds for safekeeping. NAFCU therefore believes that such an important decision should only be made with the full knowledge afforded by the proposed disclosures to be imposed on all non-federally insured depository institutions.

The Commission has proposed that covered institutions conspicuously disclose in all periodic statements and account records an indication that the institution is not federally insured and that a customer's funds are not backed by the federal government. Covered institutions must also make disclosures in all advertising such as, but not limited to, print, electronic, webpage and broadcast media. Furthermore, the Commission has proposed that non-federally insured depository institutions must obtain written acknowledgements from new and certain existing customers indicating that they have received the necessary disclosures. The proposed disclosures essentially track the statutory requirements imposed by the Federal Deposit Insurance Act (FDIA) (as amended by FDICIA). NAFCU supports the proposed disclosures and believes they are necessary and will help consumers make informed decisions.

Exercising its statutory discretion as provided in section 43(d) of FDIA, the Commission has also proposed an exemption from the disclosure requirements for institutions that only receive initial deposits of \$100,000 or greater from customers. The proposed exemption assumes that all customers with deposits of \$100,000 or greater possess a sufficient level of sophistication and understand whether or not their deposits are insured. However, NAFCU has heard from federal credit unions that have had members with deposits over \$100,000 who did not understand how their funds were insured. Also, NAFCU is concerned that a consumer who is depositing an amount greater than \$100,000 in a non-federally insured institution may mistakenly assume that the first \$100,000 is federally insured because he/she has received no disclosure to indicate otherwise. NAFCU strongly believes that the best financial decisions are made with full disclosure and that consumers at all deposit levels should be provided with disclosures about the insurance of their funds. Therefore, NAFCU does not support the proposed exemption.

As required by section 43(b)(2) of FDIA, the proposed rule requires disclosures at each location "where the depository institution's account funds or deposits are normally received including, but not limited to, its principal place of business, its branches, its

² Id. at 79-80.

Mr. Donald C. Clark
June 14, 2005
Page 3 of 3

automated teller machines, and credit union centers, service centers, or branches servicing more than one credit union or institution.” While this proposed language is broad, it includes the word “normally” (as does section 43(b)(2) of FDIA), which might suggest that disclosures would not be required at non-traditional locations. The examples included in the proposal as normal are all physical in nature – brick and mortar and would not seem to include deposits made via the Internet. A deposit of this nature would most likely occur electronically through an automated clearing house transaction, a pre-authorized demand draft, or credit card advance, and it is unclear that the proposed disclosures would necessarily apply to this type of deposit. Today, some financial institutions operate entirely via the Internet and may receive a significant number of deposits electronically. NAFCU recommends that the Commission include disclosure requirements for deposits made through the Internet or other electronic means in the final regulation.

Finally, the Commission has requested comments regarding the effective date for the final requirements. NAFCU recommends that the effective date be set for 180 days after publication.

NAFCU would like to thank you for this opportunity to share its views on this proposed rule. Should you have any questions or require additional information, please call me or Gwen Baker, NAFCU’s Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 266.

Sincerely,

Fred R. Becker, Jr.
President/CEO

FRB/whh

